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THE PUBLICATIONS OF THE SELDEN SOCIETY. Volume XX. YEAR BOOKS OF EDWARD II. Vol. III.: 3 Edward II. A.D. 1309-1310. Edited for the Selden Society by F. W. Maitland. London: Bernard Quaritch. 1905. pp. xcv, 244.

The Selden Society for the year 1905 sends us another volume of the Year Books; and it is most gratifying to find that this trustworthy and authoritative edition is proceeding without interruption. The whole volume is filled with the cases of a single year, and even then the year is not completed. The cases are not very interesting in themselves. They involve almost without exception obscure points in the law of real estate, so long obsolete that no one but an antiquarian can even understand the meaning of the points under discussion. But if we are not greatly edified by the discussions of the ancient men of law, we may turn to Professor Maitland's introduction, and there find pleasant and profitable instruction. He has again placed legal scholarship under a debt to him for a clear, interesting, and absolutely convincing account of the manuscripts and their probable origin. Further investigation has confirmed his earlier belief that there is not a single original report of the decisions, but that the manuscripts are simply collections, by various hands, of notes taken in court by the apprentices or the younger barristers. A most careful comparison of the same case in different manuscripts with the official roll makes this conclusion irresistible. The books therefore are not always correct, though we can often check them by the roll; and they must be used with some care by the legal historian. But, for all that, they are of inestimable value, not only to the student of English law, but also to the historian of the English people. "If not all of the men who compiled these books were heaven-born jurists, they were not the less human on that account, and their notes and their queries, their mistakes and their perplexities, may teach us more of English law and English life than we could learn from polished treatises." What, for instance, could be more enlightening as to the real Edward I. than this anecdote which Chief Justice Bereford tells, and the lively youth whose manuscript is called Y repeats. Isabel Countess of Albemarle had been summoned to parliament to answer the king "touching what should be objected against her." The king himself took his seat in parliament. Isabel's lawyer then demurred to the writ as too general, and Sir Ralph Hengham sustained the objection. "Then arose the king, who was very wise, and said: 'I have nothing to do with your disputations, but, God's blood! you shall give me a good writ before you arise hence.'" A touch like this is worth a volume of writs *sur disseisin de quibus* or *sur disseisin* in the *per*.

J. H. B.

ANCIENT LAW. Its Connection with the Early History of Society and its Relation to Modern Ideas. By Sir Henry Sumner Maine. With Introduction and Notes by Sir Frederick Pollock. London: John Murray. 1906. pp. xxiv, 428. 8vo.

Maine's Ancient Law was originally published nearly half a century ago, immediately after Mill's Essay on Liberty, immediately before Austin's Province of Jurisprudence Determined, in the full tide of triumphant Benthamism. It speaks well for Maine's essential qualities, for his scholarly acumen, his common sense, and his power of expression, that within the last few months no less than three editions of his now classic work have been put on the market by London publishers. The one under review is extremely well printed and enriched with notes by Maine's successor in the chair of Comparative Jurisprudence at Oxford, Sir Frederick Pollock; the only complaint one can make against the publishers is that the index is quite inadequate.

No better editor could be found for Ancient Law than Sir Frederick Pollock, and there is little cause to find fault with the twenty substantial notes he has appended to Maine's chapters. Several small points may, however, be noticed. The claim that Maine was the first to use Homer as a source of information on archaic legal procedure is not correct; more than a century earlier Vico covered this subject at some length. The same writer is left out of account when we

are told that "Montesquieu was the first of the moderns to proclaim that a nation's institutions are part of its history" (p. 174). In dealing with Edward I.'s Statute of Wales it would have been better to explain that the king's object was an administrative adjustment rather than a question of title. Maine was undoubtedly mistaken in his exposition of Rousseau's theory as to the state of nature: his editor might have done better to illustrate the point by quotations, the following being suggested: "The passage from a condition of nature to a civil condition has produced in man a very remarkable change, in substituting justice for instinct as his rule of conduct, and in lending to his actions morality which previously they lacked" (Rousseau, *Homme Civil*).

Both author and editor have much that is valuable to say on the benefit that the historian may derive from the study of law, and the lawyer from the study of history.

R. M. J.

PROCEEDINGS OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION. Held at Chicago, Ill., December 28 to 30, 1904. Lancaster, Pa.: Wickersham Press. 1905. pp. 249. 8vo.

The work of this newly organized association at its first annual meeting was divided among standing committees, each of which was entrusted with consideration of one of the following topics: Comparative Legislation; Comparative Jurisprudence; International Law and Diplomacy; Administration; Constitutional Law; Politics and Political Theory. The volume of reports contains an unusually large number of valuable essays and discussions concerning public questions of present-day interest. Among the papers dealing more specially with legal problems may be mentioned: The Relation of the Executive to the Legislative Power, by James T. Young; The Beginnings of War, by Theodore S. Woolsey; Unneutral Service, by G. G. Wilson; Contraband of War, by Henry Pratt Judson; Government Interference with Industrial Combinations, by E. B. Whitney; The Regulation of Railway Rates, by Martin A. Knapp; Tendencies in the Law of Taxation of Railways, by H. C. Adams.

CRIMINAL RESPONSIBILITY. By Charles Mercier. Oxford: At the Clarendon Press. 1905. pp. 232. 8vo.

This is a little essay by an earnest and intelligent physician on an extremely difficult and intricate portion of the criminal law. The author does not make the mistake, almost universal among physicians who enter this field, of confounding insanity and irresponsibility; he seeks for responsibility where it belongs, in blameworthiness rather than in normal health. But his ignorance of law leads him to the most astonishing generalizations. For instance, he judges "wrong" by "the magnitude of the benefit gained by the actor in proportion to the harm suffered by the victim; the greater this proportion, the less the wrong" (page 72). Responsibility, on the other hand, depends upon the selfishness of the motive. "He must desire primarily to obtain his own gratification by means of the act" (page 155). "If the things stolen are given away, as they sometimes are, to strangers or tramps, and if we cannot find a motive of causing pain or injury to the person robbed, we conclude that, for an injurious act which displays no motive of self-gratification, no responsibility is incurred" (page 156). A test of responsibility which would leave Robin Hood and the Chicago Anarchists unpunished while it would hold accountable the man who selfishly defends himself or his property, is a test which is obviously of no use to lawyers, however interesting the controversy into which it may lead "alienists." Mr. Mercier provides in a way for self-defense by treating it as a case of *provocation*, but defense of property appears to be beneath his notice.

J. H. B.